



OFFICE of *the* ATTORNEY GENERAL  
GREG ABBOTT

February 19, 2003

Mr. Charles Houghton  
Chief Deputy  
Wood County Sheriff's Department  
P.O. Box 307  
Quitman, Texas 75783

OR2003-1080

Dear Mr. Houghton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 176824.

The Wood County Sheriff's Department (the "department") received a request for information "pertaining to incidents that occurred during the 2001 calendar year," as follows:

1. The portion of any record that reflects the total number of attempted suicides investigated by and/or reported to [the department];
2. The portion of any record that reflects the total number of successful suicides investigated by and/or reported to [the department]; and
3. A copy of the offense/incident report for each such incident of successful suicide.

Among other arguments, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have

considered the exceptions you claim, your arguments, and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you request clarification from this office "as to what information, if any, may be redacted" from the requested records. We note that the request states that the requestor is not seeking the release of any of the following specific categories of information:

- Information about any person who was 16 years of age or younger at the time of the incident;
- Information that would identify or tend to identify any living person who attempted suicide;
- Criminal history information of any living person;
- Social security number information of any person;
- Texas driver's license, license plate, and VIN numbers relating to any person; and
- Bank account numbers or credit card numbers of any person.

Therefore, as the requestor has specifically excluded these categories of information from his request, such information is not responsive to the request and therefore need not be released to the requestor in this instance.

We next address your comments regarding the administrative difficulty of locating and producing responsive information. You state:

The [department] archives each offense report which results in investigation by the department. There are literally thousands of such reports for the calendar year 2001. The records are archived on computer. However, there is no code assigned for reports and/or investigations of suicide. It is not possible, for example, to request a computer generated report listing or specifically identifying all attempted and/or successful suicides, per the request. In order to comply with the request, it will be necessary for an individual having authority and knowledge of the computer system, to physically review each report for 2001, access the report which is archived on the computer system, then pick out each case dealing with suicide, and make hard copy thereof. This is very time intensive.

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<sup>1</sup> In concluding that you have submitted a representative sample of information, we note your assertion that you "have attached two items which have been extracted from the [department's] records, . . . which would appear to be *what type of information has been requested.*" [Emphasis added.] We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Regarding the administrative difficulty you describe, we note that a governmental body may not refuse to comply with an open records request merely because it would be difficult to do so. *Industrial Found. v. Texas Indus. Accident Bd.*, 540S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Attorney General Opinion JM-672 (1987). Rather, to be withheld, information requested under the Act must fall within an exception to public disclosure. See Gov't Code § 552.006.

You also state that the request seeks information "which is not available in the form requested." In regard to your apparent conclusion that items 1 and 2 of the request seek a "computer generated report" and your representation that the department cannot produce such a report, we note that the language of items 1 and 2 does not purport to request information in any particular form or format. Rather, these items seek "the portion of *any record*" that contains the information being requested. Accordingly, we cannot agree with your assertion that the information being requested here "is not available in the form requested." It appears that any record of the department containing information responsive to items 1 and 2 of the request, regardless of the form or format, would be responsive to the request.<sup>2</sup> In addition, you go on to state that "the information can be assembled if the Attorney General rules that it must be supplied pursuant to the subject request." We note that a governmental body must make a good faith effort to relate an open records request to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). It appears that the department, in good faith, is relating the request to existing records held by the department, in that you represent to this office that department personnel are "pulling those records . . . in the event" this office rules that the department must furnish that information to the requestor. We will therefore address your raised exceptions to disclosure of the submitted information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, including information contained in the reports at issue, we understand you to assert that the submitted reports pertain to cases that concluded in final results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

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<sup>2</sup>We find that the present request as written is reasonably clear, and you do not argue otherwise. We also note, however, that the Act specifically authorizes the department to contact the requestor and confirm whether he intends the request to encompass any particular record or information. See Gov't Code § 552.222(b) (specifically authorizing communications towards clarifying/narrowing an open records request); see also Open Records Decision No. 633 (1999) (providing for tolling of statutory deadline for seeking open records ruling where governmental body, in good faith, seeks clarification or narrowing of open records request).

Accordingly, except as otherwise noted below, you may withhold the submitted reports pursuant to section 552.108 of the Government Code.<sup>3</sup>

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). In Open Records Decision No. 127, this office summarized this "front page" offense report information. See Open Records Decision No. 127 at 4 (1976). We conclude that you must release this "front page" information contained in the submitted reports.

You also assert section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In light of our conclusion that most of the information in the submitted reports may be withheld under section 552.108, we need not address your section 552.101 claim except to note that you have not shown any of the basic "front page" information in the submitted reports to be protected by section 552.101.

In summary, the administrative difficulty of producing any of the requested information is not a basis for withholding it. The department may redact from any responsive records the types of information that the request excludes. The department may withhold the submitted information under section 552.108 of the Government Code, except the department must release from the submitted reports the basic "front page" information that is described in Open Records Decision No. 127 (1976).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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<sup>3</sup>We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 176824

Enc. Submitted documents

c:     **Mr. Mike Halligan**  
          **Texas Mental Health Consumers**  
          **7701 N. Lamar, Ste. 500**  
          **Austin, Texas 78752**  
          **(w/o enclosures)**